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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

WILLIS, MICHAEL A

ART UNIT

PAPER NUMBER

1617

DATE MAILED: 03/19/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/964,143

Applicant(s)

MCLAUGHLIN, JAMES HUGH

Examiner

Michael A. Willis

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Claims 1-36 are pending.

#### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 4-34, and 36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claims 4, 5, 11, 17, 24, and 30 are rejected for being vague due to the phrases "major proportion" and "minor proportion". It is unclear what percentages or ratios are included by the phrases. Additionally, it is unclear what is meant by "lanolin derivative". The metes and bounds of the phrase "lanolin derivative" are unclear.

4. Claim 7 is rejected for depending from itself. The claim also lacks antecedent basis for "said anionic surfactant". The rejection can be overcome by amending claim 7 to depend from claim 6.

5. The phrase "mildly abrasive" in claims 8, 10, 16, 23, and 29 is a relative phrase which renders the claims indefinite. The phrase is not defined by the claims, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

6. Claims 10, 16, and 29 lack antecedent basis for the phrase "said fatty matter" (lines 8-9 of claim 10; line 8 of claim 16; line 8 of claim 29).
7. Claim 20 is rejected for lack of antecedent basis for the phrase "fatty material".
8. Claim 29 is confusing due to the phrase "composition particularly suitable use in". The phrase appears to have a typographical error in leaving out the word "for".
9. Claim 36 is rejected for being confusing. The rejection can be overcome by rewriting the claim to depend only from claim 10, including any necessary text from claim 35 so that claim 36 does not refer to claims 1 and 35.
10. Any remaining claims are rejected for depending from indefinite base claims.

***Claim Rejections - 35 USC § 102***

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 1-6, 8-20, 23-27, 29-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Kellner et al (US Pat. 6,042,815). Kellner discloses water and oil emulsion solid cosmetic compositions. The compositions comprise up to 30% emollient oils (see col. 9, line 28 through col. 11, line 62). In addition to up to 30% emollient oils, Kellner discloses the use of additional emollients such as fatty alcohols as oil phase gelling agents, in amounts up to 30% (see col. 2, lines 66-67; and col. 7, line 45 through col. 9, line 26). For example, Composition D in Example 2 contains 12% butylene glycol,

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18% dimethicone, and 6% isostearyl alcohol, for a total amount of 36% emollients (see col. 23, lines 1-35). Kellner further discloses up to 20% of a primary gelling agent which is a carboxylic salt, including fatty acid salts (see col. 2, lines 24-64). Examples include magnesium or calcium salts of stearic acid (see col. 2, lines 57-63). Composition D in Example 2 includes 8% sodium stearate (see col. 23, lines 1-35). Kellner discloses that surfactants are desirable in stabilizing the emulsion compositions (see col. 11, lines 65-66). A range of 0.001-20% is disclosed, more preferably 0.05-8% by weight (see col. 12, lines 1-2). Suitable surfactants include anionic surfactants (see col. 18, line 31 through col. 19, line 29). Composition D in Example 2 includes 3.5% of the nonionic surfactant PEG-20 methyl glucose sesquiisostearate (see col. 23, lines 1-35). Particulates are included from 0.1-50% (see col. 1, line 55 through col. 2, line 3). Particulate matter includes starch (see col. 19, lines 36-60). Composition D in Example 2 includes .1% mica (see col. 23, lines 1-35).

### ***Claim Rejections - 35 USC § 103***

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

15. Claims 1-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Puvvada (US Pat. 5,965,500) in view of Saud (US Pat. 4,704,224) and .

16. Puvvada teaches stable liquid compositions comprising high levels of emollients. The compositions relate to liquid cleansing compositions typically used in skin cleansing or shower gel compositions (see col. 1, lines 5-12). The compositions contain 10-35% emollient, 3-30% surfactant, and preferably up to 10% fatty acid (see col. 1, lines 36-51). A wide variety of emollients are taught (see col. 6, lines 12-41). Surfactants include acyl taurates (see col. 2, lines 21-23 and 57-63). Puvvada teaches the use of C12-C24 fatty acids as structurants in amounts up to 10% of the total composition (see col. 6, lines 42-51). It is noted that applicant's definition of emollient material includes fatty acids (see page 7, lines 28-29 of the specification). Puvvada teaches the use of magnesium stearate as an opacifier (see col. 7, lines 1-3). Particulate matter taught by Puvvada includes titanium dioxide (col. 7, line 3), sodium chloride (col. 7, lines 10-13), and exfoliating solids (col. 7, lines 24-26). Starches such as methylcellulose are taught (see col. 6, lines 62-67). Methods of cleaning and conditioning are included in the teaching of the compositions as liquid cleansers or shower gel compositions (see col. 1, lines 5-35). The reference lacks a teaching of the weight percentages of fatty acid salts, particularly calcium stearate, and also lacks a teaching of pumice.

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17. Saud teaches that insoluble alkaline earth metal soaps such as calcium stearate are useful in personal cleansing compositions at levels up to 30%. Saud further teaches that the materials have useful properties in compositions with synthetic detergents (see col. 6, lines 1-10).

18. While Puvvada teaches the use of exfoliating solids, the reference lacks specifically teaching pumice. Street (US Pat. 6,107,351) teaches a method of exfoliating the surface of the skin with abrasive solids. Street teaches that pumice is a preferred biocompatible abrasive particle (see col. 7, lines 1-12).

19. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the compositions of Puvvada by the use of alkaline earth metal salts such as calcium stearate in order to benefit from their useful properties in combination with synthetic detergents as taught by Saud, and by the use of pumice as an exfoliating solid due to its biocompatibility as taught by Street.

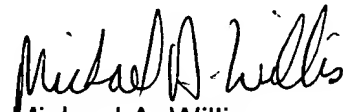
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael A. Willis whose telephone number is (703) 305-1679. The examiner can normally be reached on Mon. to Fri. from 9 a.m. to 5:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Minna Moezie can be reached on (703) 308-4612. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9307 for After Final communications.

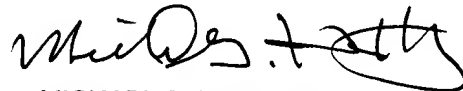
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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.



Michael A. Willis  
Examiner  
Art Unit 1617

March 13, 2002



MICHAEL G. HARTLEY  
PRIMARY EXAMINER